



Department of Law Monthly Report

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Commercial & Fair Business

Consumer/Antitrust: State Looks Into Cellular One Problems

The Consumer Protection Unit initiated an informal investigation into Cellular One and its process for taking over all of AT&T Wireless' Alaska customers after receiving several customer complaints. On November 15, 2003, Cellular One officially began providing service to all former AT&T Wireless customers following Cellular One's acquisition of AT&T's wireless business in Alaska. The state began receiving complaints from customers alleging several problems with their new wireless provider almost immediately following the switch.

Complaints ranged from bad service and dropped calls to additional charges that should have never appeared on some bills. A common complaint was that customers were being charged for services (such as roaming charges) that were included under the customer's plan with AT&T, and that it was nearly impossible to reach anyone at Cellular One to discuss billing problems.

After reviewing the complaints and communicating with Cellular One, the state determined that Cellular One was not engaged

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in a pattern or practice of unfair or deceptive behavior. Glitches in the billing system arose after Cellular One took over AT&T customers. Apparently, AT&T was not billing some customers correctly, so discrepancies became evident when Cellular One began billing customers according to their actual plans. The problems led to an overflow of customer calls, which delayed wait times. Cellular One continues to work with the state on a case-by-case basis to resolve any complaints filed by consumers.

State Renews Investigation of Crowley - Yukon Acquisition

Last fall, Crowley Maritime, Inc. announced its plan to acquire the assets of Yukon Fuel Company. Both Crowley and Yukon deliver fuel by barge throughout Western Alaska along the coast and up several river systems. Many communities rely exclusively on this service for fuel delivery, which is critical for school and utility operations. For the last several years, Crowley and Yukon have been competitors for delivery of fuel to a significant portion of Western Alaska. The City of Bethel and a group of Western Alaska utilities raised concerns about the potential impact this merger would have on fuel prices. The Consumer Protection Unit initiated an informal review of the merger and began gathering information from the parties to determine if the merger would have illegal antitrust consequences. The review was stopped when the Western Alaska Fuel Group filed a lawsuit in Nome last December to stop the merger.

The Attorney General decided to renew the investigation of the merger for potential antitrust impacts following a meeting in February with the parties involved in the litigation. The goal of the investigation is to determine whether a substantial reduction of competition will result from the combination of these two entities. The litigation in Nome has been stayed pending the state's review.

Superior Court for RCA in Waste Management Appeal

In *Waste Management of Alaska v. Regulatory Commission of Alaska*, 3AN 02-12714 CI, an appeal handled by AAG Virginia Rusch, the superior court affirmed the Regulatory Commission of Alaska's decision denying a petition by one Mat-Su Valley refuse collection company to intervene in its competitor's rate case. In earlier rulings on motions, the court denied the appellant's motion for stay and its motion to supplement the record with the affidavit of an expert witness who never appeared before the RCA. The court allowed the appellant to supplement its points on appeal to include its objections to the competitor's final rate order.

AELS Board Accepts Memorandum Of Agreement Disciplining Anchorage Architect

On February 20, 2004, the Board of Registration for Architects, Engineers and Land Surveyors accepted a memorandum of agreement between the Division of Occupational Licensing (Division) and Anchorage architect Richard Cobb whereby Cobb will pay a \$4000 fine, take a college level ethics course and accept a reprimand because: 1) he failed to truthfully answer a question on his renewal application about a prior felony conviction, 2) he was the subject of a licensing action in another state, and 3) he advertised that he was an engineer when he was not registered as such. AAG Robert Auth represented the Division in this proceeding and negotiated the settlement with Cobb's attorney.

Environmental

Appeal of Oil Spill Contingency Plans Dismissed

Superior Court Judge Rindner granted the state's motion to dismiss an administrative

appeal challenging the Department of Environmental Conservation's approval of oil discharge prevention and contingency plans for the Valdez Marine Terminal and the tankers that transport oil from the terminal. The plans address operational procedures for the prevention of oil spills and, if there is a discharge, the response and cleanup measures to be taken and the equipment and personnel required. The companies must have approved contingency plans to transport oil. AAG Alex Swiderski represented the state in this matter.

Dept. of Environmental Conservation Settles ConocoPhillips Alpine Air Case

The Department of Environmental Conservation recently settled a case with ConocoPhillips over violations of an air permit at the Alpine oil field. For about a year, a turbine used to compress natural gas for re-injection into the reservoir emitted carbon monoxide in excess of its permit limit. ConocoPhillips eventually brought the unit back into permit compliance in March 2002 by adjusting operating parameters. The settlement was limited to a civil penalty of \$80,000, calculated under EPA's Clean Air Act Penalty Policy because compliance had been achieved. AAG Cameron Leonard represented the state.

Human Services

Alaska Supreme Court Hears Oral Argument Regarding Constitutionality of Statute Governing Involuntary Medication of Mental Patients

Oral argument was held before the Alaska Supreme Court in *Faith Myers v. Alaska Psychiatric Institute*. The superior court ordered Ms. Myers committed to API upon its finding that mental illness rendered her dangerous to herself or others and gravely

disabled. API simultaneously petitioned the court for an order allowing it to treat Ms. Myers with psychiatric medication, over her objection, on a non-emergency basis. State statutes required the court to grant API's petition if the court made the single finding that the patient was not competent to make her own decisions regarding antipsychotic medication. The court made this finding and granted API's petition.

On appeal, Ms. Myers argued that Federal and state constitutional provisions required that before ordering her medicated, the Superior Court must find that the medication was in her objective best interest and that Ms. Myers would have personally chosen to accept the medication if she had been competent to make her own decisions. API argued that courts should not second-guess physicians' treatment decisions for incompetent patients, but should instead review those decisions for abuse of discretion. API also argued that the state's parens patriae duty requires it to act in an incompetent patient's objective best interests. At oral argument, the justices were interested in the argument that a court must find antipsychotic medication to be in a patient's best interests before the patient may be involuntarily medicated. AAG Mike Hotchkin handled the appeal for API.

Alaska Supreme Court Upholds Decision Terminating Parental Rights in Two Cases

In January the Alaska Supreme Court issued an unpublished MO&J in *Lamar F. v. Dept of Health and Soc. Services*. The court affirmed the termination of a father's parental rights to his two young sons who had accused him of sexually molesting them. The father argued that the department had not made reasonable efforts to reunite the family. The court agreed that the department had not made reasonable efforts for the first four months that it had custody of the children. However, after examining the entire period of time at issue, the court found that the department had made reasonable efforts, and that the father's refusal

to participate in those efforts "was the reason for the reunification failure."

The supreme court noted, in dicta, that because the father had sexually abused his sons, the superior court could have terminated his rights without the need for a finding that the department had made reasonable efforts at reunification. The Alaska Supreme Court affirmed the superior court's termination of the father's parental rights to the boys. AAG Toby Steinberger (Labor and State Affairs) volunteered to help out the Human Services section by handling the appeal.

In February, the Alaska Supreme Court issued another MO&J in the case of *C.D. v. State*, No. 1158.

C.D. involved a family in which Office of Children's Services was involved for approximately seven years. It began when the mother physically abused her twin boys when they were less than a year old; the more severely abused boy had to be treated at Children's Hospital in Seattle for his injuries. At the time, there were suspicious findings on both boys. The mother had serious mental health issues which she failed to acknowledged or address and the father was a binge alcoholic who was in complete denial about the mother's abuse of the boys and who relapsed every time he was about to reassume full custody of the boys. He disagreed with OCS's assessment of the danger the mother posed to the twins and arranged for the twins to have unsupervised contact with their mother when he was incarcerated after his felony DUI in fall 2002.

In the course of the case, the twins endured multiple moves including foster placements, a failed placement with their maternal grandmother, and several failed attempts to reunite them with their father. As a result of their history, both twins had attachment disorders and required a high level of stability in order to have a chance at reasonably normal lives.

The father appealed the termination of his parental rights, claiming primarily that the trial court should have *sua sponte* established a guardianship rather than terminate his rights, although he had failed to raise that option throughout the entire case at the trial court level. He also asserted that the state failed to establish that termination was in the children's best interests.

The court agreed that the claim the court should have established a guardianship was waived by failing to assert it at the trial court. The court also found it was in the children's best interest to terminate parental rights.

Superior Court Issues Order Requiring a Native Village to Produce its Records About a Family to the Parties in a CINA Case

After the superior court granted a Native village's motion to intervene in a CINA case, one of the parties to the case obtained an order requiring the tribe to deliver its records concerning the case to the court to determine whether they should be shared with the other parties. The tribe delivered the records to the court and, after reviewing them, the court ordered that they be produced to the other parties the case. In a subsequent motion to vacate the order, the tribe argued that, under the doctrine of sovereign immunity, it could not be forced to comply with any of the court's orders, including the order to produce records.

The superior court denied the motion to vacate, finding that when the tribe intervened in the case, it consented to the court's jurisdiction and like the other parties in the case, it is fully bound to comply with the court's orders. According to the court, "to hold otherwise would allow a Tribe who intervened in a lawsuit to obtain discovery from the other parties but never provide discovery on its own. This would be unjust..." AAG's Tracy Hanley and Dan Branch represented the state in the case.

Labor & State Affairs

Emergency Fire Fighters Suit Settled

After lengthy negotiations, the Department of Natural Resources, the Department of Administration, and the Alaska State Employees Association agreed to settle ASEA's suit concerning the State's use of emergency fire fighters. ASEA claimed in its suit that the State used emergency fire fighters improperly. In settlement, the State agreed to create short-term nonpermanent positions annually for duties related to fire suppression when both the need and the funding exist. ASEA and the State also agreed that each would bear its own costs and attorney fees in this case. AAG Dave Jones represented the State in this case.

Supreme Court Affirms Denial of Prejudgment Interest in Hospital Medicaid Rate Appeal

The Alaska Supreme Court affirmed the denial of prejudgment interest in hospital Medicaid rate appeals in *Charter North Behavioral Health System v. State, Dept. of Health and Social Services*, Supreme Court Case No. S-10661. By way of background, hospital facilities voluntarily participating in the Medicaid program have the right to administratively appeal the facility's Medicaid rate. This case confirms that prejudgment interest is not available when the Medicaid rate is recalculated as a result of the administrative appeal. The Memorandum Opinion and Judgment issued by the Court on February 4, 2004 noted that the same issue was recently decided by the Court in the *Samissa Anchorage, Inc. v. Dept. of Health and Social Services*, 57 P.3d 676 (Alaska 2002). AAG Julia Tucker represented the State in this appeal.

Legislation & Regulations

Legislative Activity Predominates; Important Regulations Projects Approved for Filing

During February 2004, the Legislation and Regulations Section continued reviewing legislation projects for the governor's consideration and edited amendments to bills for presentation to legislative committees. The section presented legislative testimony on regulation reform bills and the Department of Law's supplemental appropriations bill. The section facilitated AAG's presenting legal advice on pending legislation.

The section also performed legal review of several regulation projects, including regulations by the Board of Fisheries (statewide finfish rules, annual statistical summary for processor capacity, fees for Juneau Hunter Education Indoor Shooting Range); the Department of Education and Early Development (high school graduation qualifying examination, re-examinations); the Alaska Commission on Postsecondary Education (federal consolidation loans); the Board of Public Accountancy (computer-based examinations); the Department of Labor and Workforce Development (worker's compensation regulations); the Department of Natural Resources ("UCC filings" with the state recorder's office); the Department of Community and Economic Development (registration of home inspectors, occupational licensure fees); the Department of Revenue (corporate income tax credit for gas exploration and development).

The section completed the preparation of bill reviews on pending legislation transmitted to the governor for action during the month. The section also conducted a class on the introduction to the regulation process for Legislative Information Offices. Twenty employees from statewide offices attended the

in-person class. The evaluations indicated that the class was well received.

Natural Resources

Board of Fisheries Meeting Coverage

AAG's Lance Nelson and Jon Goltz shared duties in covering the Board of Fisheries' regulatory meeting on Alaska Peninsula/Aleutian Islands Finfish and Supplemental Issues in Anchorage from February 15 - 24. The Board acted on a number of controversial topics, including the Alaska Peninsula's June salmon fishery and its interaction with sockeye and chum salmon fisheries in Bristol Bay and western Alaska and a new general district for commercial salmon fishing in Bristol Bay.

Opinions, Appeals & Ethics

Conference of Alaskans

AAG Jim Baldwin served as counsel to the Conference of Alaskans held in Fairbanks in early February. His duties included giving advice to the presiding officer, facilitator and various delegates. The conference was fast paced with many informative presentations by the Alaska Permanent Fund Corporation, the Department of Revenue, the Office of Management and Budget, and others. Jim has copies of most of the written material provided to delegates if anyone in the department is interested in reading them.

Public attention was focused early on the second day of the conference when Former Governor Jay Hammond presented his "claw back" income tax plan. The conference concluded with a flurry of activity surrounding the drafting and debate over the adoption of four resolutions giving advice to the Governor.

It remains to be seen if the conference will serve as a catalyst for further legislative action on a fiscal plan. The legislature is scheduled to devote time during the regular session to concentrate on bills and resolutions dealing with the fiscal plan. The conference was remarkable for the openness of its conduct and the high level of debate that occurred.

Alaska Supreme Court Rules Against Former Governor Knowles on University Land Grant Case

The Alaska Supreme Court issued a decision recently in *Legislative Council v. Knowles*. This case arose from the legislature's failure to pass a motion to override the Governor's veto of SB 7 by a three-quarters vote. This bill entitled the university to a large land grant intended to generate revenue for the university's use.

The Alaska Legislature passed SB 7, but Governor Knowles vetoed the bill. The legislature then voted on an override, with 41 yeas and 19 nays, a vote of more than two-thirds but less than three-fourths of the members. Governor Knowles refused to implement SB 7 because he believed the bill would effect an appropriation, which under the Alaska Constitution requires a three-fourths override vote.

The Legislative Council filed suit, seeking a declaratory judgment that the two-thirds vote was sufficient to override the veto. Governor Knowles argued that the 250,000 – 260,000 acres of statehood act land that the bill committed to the university to generate funds was a public asset subject to the same limitations that apply to appropriations of money. The Alaska Supreme Court held that for purposes of Article II of the Alaska Constitution, the term "appropriation" refers only to monetary appropriations. The court remanded the case to allow the trial court to reconsider whether to allow several conservation organizations to intervene to challenge the constitutionality of the act.

AAG Joanne Grace handled this appeal.

State Files Opening Brief in the Senate Vacancy Initiative Case

AAG Joanne Grace filed the opening brief in the Alaska Supreme Court appeal in the case of *State v. Trust the People*. The case arose when the Lieutenant Governor denied certification of an initiative application. The application, filed by a sponsor group called "Trust the People," proposed an initiative to change the manner in which Alaska fills mid-term vacancies to the United States Senate. The Lieutenant Governor denied certification when the Attorney General advised that the Seventeenth Amendment to the United States Constitution delegates authority for determining how to fill such vacancies solely to state legislatures. He thus concluded that this type of law could not be passed by popular vote.

The sponsors presented the issue to the superior court, which ruled against the state without reaching the Seventeenth Amendment issue. The court instead found that the issue should wait until after the general election, to see first whether the people enact the law. The state appealed. The Alaska Supreme Court is hearing the appeal on an expedited schedule, so that it has time to issue a decision before the ballots for the November 2004 election must be printed.

Torts & Workers' Compensation

Ninth Circuit Affirms Dismissal of State Officials in Defamation and ADA Case

A rural school district employee and her husband sued her employer and a number of individual employees for allegedly telling others that she was HIV positive, which was not true. They also sued the State's Division of Family and Youth Services (DFYS) and a

state social worker because that worker noted in a confidential children's file that a school district official had told her the employee was HIV positive. The state took no action based on the notation, and it was not disseminated.

Ruling on motions filed by former AAG Richard Keck, the federal district court judge granted summary judgment to the social worker, finding no defamation, and dismissed the claims against DFYS, which had alleged violations of the Americans with Disabilities Act and the Rehabilitation Act of 1973. The case proceeded for several more years against the school district and district employees, resulting in two trials that ended in those defendants' favor. Although the plaintiffs appealed only the judgment entered after the first trial, their briefing also argued about the merits of the lower court's dismissal of the state defendant's years earlier. AAG Susan Cox filed a brief on behalf of the state defendants/appellees, contending that there was no viable appeal involving those parties. The Ninth Circuit agreed.

Transportation

DOTPF's Authority to Construct C Street Challenged

DOTPF plans to extend C Street in Anchorage from Dimond to O'Malley. A landowner moved to dismiss a condemnation action filed by the State to acquire land necessary to construct this project. The landowner claims the state lacks the authority to condemn land for this project. Specifically, the landowner believes the Anchorage municipal law establishing a method for the Municipality of Anchorage to process DOTPF's application for preliminary plat approval violates a state law. AAG Peter Putzier is opposing the motion on behalf of DOTPF.

Alaska Land Title Association Educational Seminar

AAG Jim Cantor delivered a talk on public land order easements and section line easements to an Alaska Land Title Association title agent re-certification seminar.

Criminal Division

ANCHORAGE

During the month of February, the District Attorney's Office presented 40 cases to the grand jury.

The grand jury indicted two men for murder in the second degree in the December shooting death of the brother of one of the men, who came between them during the collection of a drug debt. For the first time in a long time, it was the middle of February before Anchorage had its first homicide. In that case, the grand jury indicted a man for murder in the first degree for the shooting death of another man in a Muldoon trailer court.

In the trial of the month, ADA Adrienne Bachman convicted John Hunter of five counts of sexual assault in the first degree against five different women from 1996 to 2002. The trial started on January 12, and took 25 trial days. Hunter was a registered sex offender, having been convicted of rape in 1983 and sentenced to eight years in prison. The case began when a girl reported that her mother had been raped in 2002. The mother told police that she had been drinking in a bar in Spenard and had been offered a ride home by John Hunter. Instead, he drove to an abandoned trailer house in Matanuska Valley and raped her. Blood from Hunter's jacket was on the mother's jacket. Both the mother and Hunter's blood were mixed on Hunter's blue jeans.

The samples from the 2002 case led to a CODIS hit on two other Anchorage rape cases from 1997 and 1998. In the 1997 case, a young woman was walking near the Hub Bar

on Fourth Avenue in downtown Anchorage. Hunter pulled up in a vehicle, offered her a ride, and, once she was inside, threatened to kill her if she did not agree to sex. In the 1998 case, a young woman was walking along the street when Hunter pulled up and threatened to kill her if she did not get in. He took her to a remote part of Anchorage and raped her in the car. He let her out and she went to a nearby business and called police.

In a 1996 case, Hunter picked up a woman from the Brother Francis Shelter in his car, and raped her. She escaped from the car and ran to a security guard. Police found Hunter and found tufts of the woman's hair in his car. Hunter told police the woman was a hitchhiker who propositioned him for sex when he gave her a ride and he forced her out of his car. Then in a 2001 case, Hunter picked up a woman walking along Spenard Road. He took her to an apartment and threatened that she could do it "the easy way or the hard way." Police found her jewelry and her other property in his car. The trial was Judge Phil Volland's first criminal jury trial and Fred Dewey defended.

ADA Marcie McDannel convicted Garrett Bowley in a jury trial of manslaughter and assault in the first degree. Bowley, driving a 1977 Ford pickup at about 70 miles an hour, entered the intersection DeBarr Road and Airport Heights on a red light and struck an on-coming car turning on a green arrow. A seventeen-year-old was seriously injured and an eighteen-year-old was killed. Bowley was trapped under his pickup and bystanders helped free him. However, one of his shoes remained trapped under the pickup. Bowley and his passenger then left the scene on foot, but was later found walking in the area with no shoes and several bystanders identified him as the man they had freed. Bowley initially told police that the pickup, registered to him, had been stolen by "some Samoans."

ADA John Bandle convicted Tim Alex in a jury trial of possession with intent to deliver cocaine,

felon-in-possession of a firearm and possession of a firearm in connection with a drug offense. In that case, a routine traffic stop and DUI arrest turned into an arrest for a felon in possession. Later, during Alex's bail hearing before the on-duty magistrate, the officer heard something fall to the floor and found a golf ball-sized bag containing 33.76 grams of cocaine. In another case, ADA Ben Hofmeister convicted Gregory Williams in a jury trial of felony driving under the influence and assault on a police officer.

Judge Stephanie Joannides sentenced Marshall Ahvakana, to 60 years in jail for the sexual assault and second-degree murder of his fifteen-year-old niece. In 2003, Ahvakana raped her, killed her with a baseball bat, and hid her body in his parent's trailer, leaving a note in the trailer confessing to the crimes. When he was arrested, a CODIS hit connected him with a bike-trial sexual assault committed in Russian Jack Park a year earlier. Ahvakana was convicted of that sexual assault, too. The judge sentenced him to an additional 10 years for the Russian Jack sexual assault, for a total sentence of 70 years in jail.

Judge Larry Card sentenced Tony Roberson to 60 years in jail for second-degree murder of Ronald Stevens, the owner of the Burger Stop. The two men had been together during the day. When they returned to the Burger Stop, over which Stevens lived, the two got into an argument and Roberson stabbed Stevens in the heart with a knife.

Judge Michael Wolverton sentenced Ted Beard to 28 years in jail, with 10 suspended, for multiple counts of sexual assault on his fifteen-year-old stepdaughter.

BETHEL

Bethel had some interesting jury trials in the month of February. A woman was found not guilty of driving under the influence. This was

a case out of one of the neighboring villages and no Datamaster reading to support the charge.

Ronald Peltola was found not guilty of game violations after a jury trial. His son, Gary Peltola, who had also been charged, had his charges dismissed by the judge prior to the case going to the jury. Ronald Peltola is pending sentencing on other game violations that he was convicted on in Aniak.

Just prior to his trial, Ronald Peltola was arrested for five counts of sale of liquor without a license and one count of possession of alcohol with intent to sell. He was also charged with six counts of violating conditions of release. He was indicted on the felony charges on February 26th. He is pending trial in the new cases.

There was one indictment for sexual abuse of a minor in the first degree, two indictments for sexual abuse of a minor in the second degree and two indictments for sexual assault in the third degree. One person was indicted for escape, another for forgery in the second degree, another for burglary in the second degree, and yet another person for driving under the influence. Two persons were indicted for misconduct involving a controlled substance in the forth degree. There were also two indictments for manufacture of alcohol, two for importation of alcohol, two for possession of alcohol with intent to sell, and finally two for sale of liquor without a license.

JUNEAU

A man and his wife were indicted on attempted murder, assault in the first degree and robbery charges, arising out of a near-fatal attack on a local cab driver who they set up for a robbery. ADA Doug Gardner worked closely with the Juneau Police Department for several weeks in the investigation of the case. The victim had been attacked with a knife from behind, while he was belted in the driver's seat of his cab. His throat was deeply cut and his hands had

numerous slash wounds, some so serious that several fingers on both hands were nearly severed.

The Juneau office continues to receive a steady influx of child sexual and physical abuse cases, one of which resulted in the indictment of a man for assault in the second degree after he seriously injured a two-year old child. This case had been under investigation for over six months.

Finding that honesty is the best policy, two defendants who had been target practicing in their backyard with a hunting rifle while inebriated (sometimes widely missing the mark) pled guilty outright. After politely listening to the judge explain their rights and emphasize the importance of representation by a lawyer, and a public defender, if they could not afford to hire one, they responded, "why would we want to do that judge, we're guilty." At sentencing, the prosecutor indicated that acceptance of responsibility boded well for their rehabilitation.

KENAI

The defendant who is presently charged with murdering Kenai Police Officer John Watson was also indicted by the grand jury for witness tampering. He was attempting to get his girlfriend, who was not only a witness to the shooting but a domestic violence victim as well, to change her story because, as he put it, "It's getting me in trouble."

Dozens of victims in a series of burglaries in the Nikiski area are getting their stolen property back with the arrest of "the fence" who had enough stolen property to fill the multi-car garage at the Trooper Post.

A divorce-gone-bad ended with the defendant/ex-wife being found guilty by a Kenai jury of theft in the second degree for stealing property of the ex-husband.

KODIAK

Meth labs have come to the island. Two Kodiak men were indicted as co-defendants for class A felony misconduct involving a controlled substance in the second degree after one cooked and the other sold a bindle of methamphetamine to a confidential informant working with the Kodiak Police Department. A May trial date is pending.

A 32-year-old Kodiak man, who brought two ounces of cocaine from Anchorage to Kodiak, was convicted of a class B felony for misconduct involving a controlled substance in the third degree. He was sentenced to serve three years in jail, with 30 months suspended, and was placed on probation for five years. His sentence was mitigated as he had subsequently assisted police authorities in their investigation of other individuals known by the defendant to be involved in narcotics trafficking.

If at first you don't succeed, sometimes it's better not to try again. A Kodiak man walked into a local liquor store and walked out with a bottle of bourbon without paying for it. He was quickly caught, charged with theft, and ordered off "all property of [the liquor vendor] in the State of Alaska". The very next day the same man walked into another branch of the vendor, walked directly to the bourbon in the back of the store, took a bottle and again left the store without paying. The grand jury had little trouble indicting for theft and burglary. He remains in jail pending an April trial date.

KOTZEBUE

After a weeklong trial, a Kotzebue jury could not agree on a verdict in the trial of a Kotzebue man charged with sexual abuse of a minor. Despite strong physical evidence and good testimony from the victim and witnesses, the jury was hung. In another case, a Kotzebue man was arrested on charges of assault in the third degree for threatening his mother's caretaker with a knife. Finally, the Empress restaurant had several break-ins during the

month, and the owners finally caught two men red-handed stealing food after breaking the large double-paned window. Both suspects were charged with burglary and theft offenses.

NOME

Co-defendants Andrew Ningealook and Terri Ann Johnson were each sentenced for two counts of assault in the third degree for pointing a shotgun at two Shishmaref village police officers responding to a domestic altercation. Johnson received three years to serve and Ningealook received seven years to serve (it was not their first time through the system). A man was indicted for criminally negligent homicide for the death of his brother. The victim was reportedly drunk and obnoxious; the defendant wasn't. In order to "shut his brother up", the defendant knocked him to the floor and then "knee-dropped" him, crushing the man's chest. A Gambell man was charged with a felony assault stemming from the apparently unprovoked assault on a drinking companion in Gambell. The victim suffered a broken jaw. A Nome man was also charged with several felony assault counts after threatening his two younger sisters and his girlfriend with a knife.

PALMER

Lee Richards was sentenced to serve six and a half years for felony driving under the influence and driving on a suspended license. Richards was convicted after a jury trial. He had 10 prior misdemeanor DUI convictions and 20 prior convictions for driving on a suspended or revoked license.

Stephen Barnes was convicted of assault in the fourth degree after a jury trial in Cordova. The 17-year-old victim was helping a friend pull the friend's truck out of Eyak Lake. Barnes was upset about the truck being stuck in the lake. He confronted the victim, jumped up on the hood of the truck and kicked him in the face (the victim was standing on the driver's side running board). Barnes, 47, took

the stand and claimed self-defense. He was sentenced to three months in jail, with nine additional months suspended, a \$5000 fine and anger counseling.

Attorney Mark Weaver was convicted of harassment after a jury trial in Palmer. The conviction resulted from an incident in June of 2003. Weaver volunteered to be an assistant coach for his child's soccer team. During a game, he became upset with the victim, who was a player on the team. Weaver chased him down and pulled off the victim's shorts and underwear. The Matanuska-Susitna Valley Competitive Soccer Club banned Weaver from attending future games. District Court Judge Greg Heath placed Weaver on probation for two years and ordered Weaver not to have contact with the victim and the victim's family.

OSPA

(Office of Special Prosecutions & Appeals)

Special Prosecution Unit

The bootlegging prosecutor forfeited another snowmachine after obtaining a change of plea in a misdemeanor importation case involving a Kiana resident.

The Medicaid Fraud Control Unit charged a personal care attendant with falsifying his pay sheets to show more hours worked than he actually had. Charges were also brought against a pharmacist for felony theft and failure to provide records to the Medicaid agency after investigators discovered double and triple billing for drugs.

A University of Alaska, Anchorage police officer, who resigned after being charged with driving while intoxicated and refusal, changed his plea to driving while intoxicated earlier this month.

A man, who resigned as a police officer in another state after being implicated in a

nationwide investigation into child pornography, was indicted on 23 counts of possession of child pornography.

Petitions & Briefs of Interest

Briefs of Interest

Constitutionality of DNA-collection statute. The DNA-collection statute, AS 44.41.035, requires incarcerated defendants convicted of felonies (among others) to provide a DNA sample; the refusal to provide a sample is criminal under AS 11.56.760. The incarcerated defendant challenged the DNA collection as an unlawful search. The state argues to the court of appeals that incarcerated defendants have a significantly reduced expectation of privacy that is outweighed by the state's strong interests in identifying convicted offenders and reducing recidivism. *Nason v. State*, A-8673.

Alleged juror misconduct. During deliberations, the jury sent a note stating that a juror recalled being at a party with the defendant and then leaving because the way he looked at her made her uncomfortable. The court instructed the jury to decide the case based only on the evidence presented at trial; in an individual voir dire, the juror in question affirmed that she could decide the case based only on the evidence presented. The state argues to the court of appeals that a mistrial was unnecessary in light of these corrective actions and that the jury having sent the note demonstrated that it was preemptively taking appropriate measures to decide the case based solely on the evidence at trial. *Aguchak v. State*, A-8310.

Investigatory stop for parole violation. The state argues to the court of appeals that a police officer can conduct an investigatory stop for a suspected parole violation and then contact the defendant's parole officer for further direction. The state argues that an

independently-initiated police investigatory stop for a parole violation does not violate *Roman v. State*, 570 P.2d 1235, 1242 (Alaska 1977), which said that parole searches should not be done absent the parole officer's direction. *Reichel v. State*, A-8555.

Statute and Rule Interpretations

AS 28.35.031(g) and breath test in the event of a serious-injury or fatal accident. Alaska Statute 28.35.031(g) – the “implied consent” statute – provides that a motorist gives consent to a breath test if he or she is in an accident causing death or serious physical injury to another person. The Alaska Supreme Court upheld the constitutionality of this statute by reading into it the requirement that probable cause exists for the search it authorizes of the person's breath. *State v. Blank*, Op. No. 5783 (Alaska, February 27, 2004).